IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

WP(C).No. 7189 of 2007(E)

PETITIONERS:

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1. HEMACHANDRAN, AGED 32,
S/O.K.RAVEENDRANATHAN PILLAI, REMALAYAM,
THOLICODU P.O., PUNALUR, KOLLAM.

2. MOHANAN, S/O.BALAKRISHNAN,
AGED 45, ANEESH BHAVAN, THOLICODE P.O.,
PUNALUR.

BY ADV. SRI.RAJA VIJAYARAGHAVAN
SRI.R.RENJITH

RESPONDENTS:

1.STATE OF KERALA, REPRESENTED BY
THE SECRETARY, DEPART. OF LOCAL SELF GOVT.,
GOVERNMENT SECRETARIATE, THIRUVANANTHAPURAM.

2.THE PUNALUR MUNICIPALITY, REPRESENTED
BY ITS SECRETARY, MUNICIPAL OFFICE,
PUNALUR, KOLLAM.

3.THE KERALA STATE POLLUTION CONTROL
BOARD, DISTRICT OFFICE, KOLLAM REPRESENTED
BY ITS SECRETARY.

R2 BY ADV. SRI.B.KRISHNA MANI
R1 BY GOVT. PLEADER MR.K.J.MOHAMMED ANSAR
R3 BY ADV.SRI.M.K.CHANDRA MOHANDAS

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C)No.7189 of 2007

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Dated: 22nd March, 2007

JUDGMENT

The petitioners who are residents within the limits of the 2nd respondent-Municipality are aggrieved by what they describe as the proposal of the Municipality to establish ad commission an L.P.G. Crematorium at Tholicode, Punalur without complying with the mandatory provisions contained in the statutes. They seek a writ of mandamus commanding the 2nd respondent-Municipality not to proceed with the construction of the L.P.G. Crematorium at Tholicode, Punalur without complying with the mandatory provisions contained in the statute.

2. An Advocate was deputed as Commissioner for inspection of the premises in question and he has filed a report. When it was seen from the Commissioner's report that the work relating to the construction of the L.P.G. Crematorium had only started, this court on 9.3.2007 directed that the party respondents shall maintain status quo obtaining as on that day for a period of five days and that interim order has been continued till date.

3. Detailed counter affidavit has been placed on record by the Municipality producing various documents. Elaborate submissions were also addressed before me by Mr.R.Renjith, counsel for the

petitioners and Mr.B.Krishnamani, Standing Counsel for the Municipality.

4. Mr.Renjith would place before me the photographs of what he described as the existing burial and burning ground and he submitted that Ext.R2(g) certificate issued by the Local Village Officer pertains to that ground only and the petitioners have no objection whatsoever if the Municipality being permitted to establish the crematorium in the ground which is covered by Ext.R2(g). He submitted that the present proposal is to establish L.P.G. Crematorium not on the property covered by Ext.R2(g) but on another property which is one close proximity to the residential house of the petitioner. Referring to Sections 484, 485, 485A and 486 of the Kerala Municipality Act, Mr.Renjith would submit that the procedure envisaged by those provisions has not at all been complied with.

5. Referring to various documents placed on record, Mr.Krishnamani, Standing Counsel for the Municipality would submit that the proposal is to have the L.P.G. Crematorium in another corner of the existing burial-cum-burning ground. The learned Standing Counsel submitted that all arrangements are made for completing the construction work before the closure of the financial year and agreements have been executed. He further submitted that the interim order presently passed may be vacated lest the funds

earmarked for the above work should lapse by the 31st instant.

6. Considering the factual disputes which have cropped up, I am of the view that the petitioners should seek their remedies from the civil court. I dispose of the Writ Petition relegating the petitioners to the remedy before the civil court. However noticing that necessary steps have already been taken by the Municipality for establishment of a L.P.G. Crematorium and the prima facie merit noticed by me in the submission of the Standing Counsel for the Municipality that the present proposal is to establish a L.P.G. Crematorium in another portion of the property which is the existing burial-cum-burning ground, the interim order directing maintenance of status quo will stand vacated. The Municipality is directed to go ahead with the work of constructing and installing the L.P.G. Crematorium. But the Municipality shall not commission the L.P.G. Crematorium till 30.4.2007. However, if the work is over the Municipality is free to have an inauguration ceremony for the Crematorium but the inauguration shall not be by burning any dead body in the Crematorium. The suit, if any, has to be instituted by the petitioners before 30.4.2007.

srd **PIUS C.KURIAKOSE, JUDGE**